IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.MC.No. 2480 of 2007()

AS.183/2004 of SESSIONS COURT, TRIVANDRUM
CRIME NO.49/07 OF POZHIYUR POLICE STATION

.....

PETITIONER: ACCUSED:

JUSTIN FRANCIS, S/O. FRANCIS,
MAHADEVARVILA VEEDU, AYIRA DESOM, KARODE VILLAGE,
NEYYATTINKARA TALUK.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI. SHAIJAM S.HAMEED

RESPONDENTS:

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1. THE S.I. OF POLICE,
POZHIYUR POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SAJEEV, S/O. LAZARAS,
S.S. BHAVAN, KOTTAVILA, PARASSALA DESOM,
PARASSALA VILLAGE.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2480 of 2007

Dated this the 3rd day of August, 2007

O R D E R

The petitioner has come to this Court with a prayer to quash the proceedings invoking the powers under Section 482 Cr.P.C.

2. What is the ground ? The learned counsel for the petitioner submits that the defacto complainant is not a member of the Scheduled Caste or Scheduled Tribe. He belongs to the Christian community. He has held himself out to be a Christian in many documents. In these circumstances, the proceedings are liable to be quashed.

3. The learned Public Prosecutor submits that the statement made by a person allegedly belonging to the Scheduled Caste/Scheduled Tribe community about the caste/tribe to which he belongs cannot be held to be final or authentic. Police will conduct investigation into that aspect. It shall be ascertained truthfully as to whether the petitioner does belong to any Scheduled Caste/Scheduled Tribe. Only if that question after investigation is answered in favour of the complainant, shall further investigation proceed. I am unable to agree that the complainant cannot explain any earlier statement made by him about the caste/community to which he belongs. He cannot be

held to be a prisoner of such statements made by him elsewhere. The matter will have to be enquired into by the Investigating Officer in detail and appropriate conclusions must be reached. Of course, in the course of trial, if ultimately the matter should go for trial, the petitioner's option to raise challenge on that aspect shall remain unfettered. At any rate, I am not satisfied that the F.I.R deserves to be quashed on that short reason.

4. The learned counsel for the petitioner then contends alternatively that the petitioner may be subjected to undeserved trauma of arrest and detention. It is certainly for the petitioner to appear before the learned Magistrate and apply for regular bail. It has been repeated many times and in **Ali v. State of Kerala** [2000(2) KLT 280], **Shanu v. State of Kerala** [200(3) KLT 452], **Krishnakumar v. State of Kerala** [2005(1) KLD (Cri.42)] and **P.P.Kader v. State of Kerala** [2005(1) KLD (Cri.250)] that the mere fact that the offence triable by a Court of Session/Special Court under Section 14 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act does not divest the Magistrate of the jurisdiction under Section 437 Cr.P.C to consider the bail application on merits. Every court must do the same. No special or specific directions now appear to be necessary. I see no reason why the learned Magistrate in this

case - where the Investigator is himself not sure of the caste/tribe of the complainant and wants time to investigate on that aspect, should abdicate his duty/responsibility to consider the bail application under Section 437 Cr.P.C.

5. In the result, this Crl.M.C is, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself in the light of the above decisions.

(R.BASANT, JUDGE)

rtr/-